IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRL.A.No. 684 of 2007(A)

SC.109/2005 of ADDL. SESSIONS COURT (ADHOC)-II, KALPETTA
SC.109/2005 of JUDL.MAGISTRATE OF FIRST CLASS, SULTHANBATHERY
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APPELLANT: ACCUSED

BALAN @ APPU,
C.NO.3858, CENTRAL JAIL,
KANNUR.

BY ADV. ADV.ARUN B VARGHESE(STATE BRIEF)

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
CR.NO.227/04 OF MEENANGADI POLICE STATION.

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.07.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.684 OF 2007-A

Dated this the 13th day of July, 2007.

JUDGMENT

Having faced trial for the offences punishable under Sections 341, 325, 354 and 511 of 376 I.P.C, the petitioner was found guilty under Sections 511 of 376, 341 and 323. On finding the appellant guilty under the above sections, he was convicted and sentenced to undergo R.I for four years and a fine of Rs.5,000/= with default sentence of payment of fine, to undergo R.I for a further period of three months under Section 511 of 376 and R.I for two weeks under Section 341 and R.I for six months under Section 323 of I.P.C. The judgment of the trial court is challenged in this appeal. Since the appeal is filed through the jail authorities, the appeal is defended by a counsel from the State brief panel. The appeal the trial court placed reliance on the evidence of PW1, who is the victim. As per the prosecution case while PW1 was coming along the by-line near Kanyaka estate the appellant caught hold of her from behind and she was dragged to the nearby estate and thereafter the appellant attempted to commit rape on her. The further case of PW1 is that the appellant caught hold of her and caused an injury on her right

hand tip. With the above allegations, the prosecution tried to establish the case against the appellant. The trial court found that the evidence of PW1 is believable as the appellant had committed the offences charged against him especially PW1 had given evidence before the court that she was dragged to the estate and the appellant attempted to rape her. But when PW1 had given Ext.P1 statement before the police on the next day of the incident namely on 4.10.2004, he had not stated that the appellant attempted to rape her . She had only stated that the appellant waylaid her and caused injuries to her hand. The trial court found that the reason for not revealing the fact of attempted rape by the appellant was due to shame and it was only an excuse for not believing the police that the appellant tried to commit rape on her. Her only case before the doctor as well as to the Head Constable who recorded Ext.P1 statement was that the appellant came and caught hold of her hand and caused injury on her right hand. The further statement she had given before the doctor was that the appellant tried to move her sari and she was pushed out by the accused. If the evidence adduced before the court by PW1 was true that the appellant attempted to rape her, she would not have forgotten to implicate the appellant for that offence. The evidence of PW1, PW4 -the doctor and PW9 -the

Head constable, who recorded Ext.P1 statement would show that actually PW1 purposefully deviated from her F.I.Statement when she was examined before the court. Apart from the above infirmity of the evidence of PW1, it is to be noted that the prosecution has not attempted to prove any medical evidence also on this aspect. Ext.P2 medical certificate produced would not show PW1 had sustained any injury as alleged except swelling on the right hand. When investigation has been completed by the Sub Inspector, there was no evidence regarding any damage caused to the saree which was worn by PW1 at the time of the incident. The evidence of PW2 the watchmen of the estate and his fried PW8 would show that when they reached at the place of the incident, the appellant and PW1 left the place immediately. Both PW2 and PW8 had no case before the police that they have seen the appellant on the body of PW1 at any time.

In the above circumstances, the finding of the trial court that the appellant committed an offence punishable under Section 511 of 376 is not based on any evidence at all. Hence, that finding is set aside and the appellant is acquitted of that offence. The next question to be considered in this appeal is whether the appellant

had caught hold of the hands of PW1 and had injured her on the way. If so, the finding of the trial court that the appellant had committed the offences punishable under Sections 341 and 323 are on evidence. So, on considering the entire evidence, this court is of the view that the trial court rightly convicted the appellant under Sections 341 and 323 of the I.P.C and the sentences awarded against the appellant are also justifiable. The next question to be considered is whether the appellant had committed any offence other than 341 and 323 on the basis of the evidence adduced before the court. As per the evidence of PW1 it is clear that the appellant waylaid her and had caught hold of the hands of PW1 and she was dragged to a certain extent and outraged the modesty of PW1. If so, the appellant had committed an offence punishable under Section 354 of the I.P.C. This is also proved from the first information report given by PW1. In the above circumstances, the appellant is liable to be punished under Section 354 of the I.P.C. Accordingly, the appellant is found guilty under that section and he was sentenced to undergo R.I for one year.

Accordingly the appeal is allowed in part by setting aside the conviction and sentence ordered against the appellant under

Section 511 of 376 of I.P.C instead he was found guilty under Section 354 of the I.P.C. In all other respects the findings of the trial court are confirmed. The sentences awarded by the court below and this Court will be run concurrently. It is reported that the appellant has undergone imprisonment for more than 530 days. Hence, the appellant in S.C.No.109/2005 on the file of the Additional Sessions Court (Adhoc-II), Kalpetta, shall be released forthwith, if he is not required to be kept in jail in connection with any other case.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.684 OF 2007

JUDGMENT

13th July, 2007.